

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-2402

UNITED STATES OF AMERICA

v.

SONYA FETTERHOFF,
Appellant.

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. No. 07-cr-112)
District Judge: Honorable Sylvia H. Rambo

Submitted Under Third Circuit LAR 34.1(a)
May 22, 2009

Before: FUENTES, JORDAN and NYGAARD, *Circuit Judges*.

(Filed: May 27, 2009)

OPINION OF THE COURT

JORDAN, *Circuit Judge*.

Sonya Fetterhoff pled guilty in the United States District Court for the Middle District of Pennsylvania to making false statements to a government agency, in violation of 18 U.S.C. § 1001, and was sentenced to 18 months in prison. On appeal, she contends

that her sentence is substantively unreasonable. Because the District Court imposed a reasonable sentence, we will affirm.

I. Background

From 1998 to March 2003, Fetterhoff served as Director of Administrative Services for the Mental Health Association of the Capital Region (the “Mental Health Association”), an organization that serves mentally disabled individuals in Cumberland County, Pennsylvania. As part of its services, the Mental Health Association acts as a representative payee for disabled individuals who receive Social Security benefits. It then disperses the money to help those individuals meet their personal, medical, and financial needs.

From March 2002 to March 2003, Fetterhoff used her position at the Mental Health Association to divert for her personal use approximately \$33,000 from the accounts of ten different disabled individuals. The Mental Health Association eventually discovered Fetterhoff’s misdeeds and reported them to the Social Security Administration. On March 14, 2007, a grand jury returned an indictment charging Fetterhoff with eight different counts, each relating to the misappropriation of Social Security funds. Fetterhoff eventually pled guilty to a superceding information charging her with a single count of making false statements to agencies of the United States government, in violation of 18 U.S.C. § 1001.

The United States Probation Office issued a Presentence Report calculating Fetterhoff's offense level and Guidelines range. It began with a base offense level of six. It then added six levels because the amount of loss was more than \$30,000. Two levels were added because there were ten or more victims. Two more levels were added because of the vulnerability of the victims, and another two levels were added because Fetterhoff had abused a position of trust. Three levels were subtracted because of her acceptance of responsibility, leaving Fetterhoff with an offense level of 15. Because she had a Criminal History level of I, Fetterhoff's offense level yielded a sentencing range of 18 to 24 months.

At the sentencing hearing, Fetterhoff withdrew her objections to the Presentence Report and argued for a variance based on various health problems she claimed to have. Her physical ailments allegedly include fibromyalgia, stage two liver disease, diabetes, a cardiac condition, and cervical back pain. She also says she suffers from depression and anxiety.

The District Court considered Fetterhoff's argument and sentenced her to 18 months in prison. In explaining the sentence, the District Court directly addressed Fetterhoff's argument for a variance based on her health. "Mrs. Fetterhoff has a history of depression and anxiety, and she suffers from numerous health problems. These factors have been taken into consideration in sentencing at the low end of the guideline range." (App. II 69.) The Court also sought to allay Fetterhoff's concern about receiving

adequate medical care in prison, saying “the Court is, from past experience, aware that the federal prison will adequately take care of her medical needs, and if there is a problem, contact can be made to me for any interference or intervention that may be necessary.” (App II 70.) The Court further explained that a sentence of 18 months was warranted due to the egregious nature of Fetterhoff’s crime and the Court’s concern that Fetterhoff did not understand the seriousness of her offense.

Fetterhoff filed a timely notice of appeal and contends that her sentence is substantively unreasonable.¹

II. Discussion²

We review the substantive reasonableness of a sentence under an abuse of discretion standard. *Gall v. United States*, --- U.S. ---, 128 S.Ct. 586, 597 (2007). Under this standard, “if the district court's sentence is procedurally sound, we will affirm it unless no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided.” *United States v. Tomko*, --- F.3d ---, 2009 WL 1025876, *8 (3d Cir. April 17, 2009).

Fetterhoff received a sentence within the Guidelines range. As the United States Supreme Court has noted, “by the time an appeals court is considering a

¹Fetterhoff does not challenge the procedural reasonableness of her sentence.

² The District Court had subject matter jurisdiction under 18 U.S.C. § 3231. We have jurisdiction pursuant to 18 U.S.C. § 3742(a)(1) and 28 U.S.C. § 1291.

within-Guidelines sentence on review, both the sentencing judge and the Sentencing Commission will have reached the same conclusion as to the proper sentence in the particular case.” *Rita v. United States*, 551 U.S. 338, 127 S.Ct. 2456, 2463 (2007). Based on this double determination, we have observed that “sentences that are within the Guidelines range are more likely to be reasonable than those that fall outside [the] range.” *United States v. Olfano*, 503 F.3d 240, 245 (3d Cir.2007); *see Rita*, 127 S.Ct. at 2463 (“That double determination significantly increases the likelihood that the sentence is a reasonable one.”)

Fetterhoff argues that her sentence is unreasonable in view of her serious health problems. We disagree. The District Court clearly considered Fetterhoff’s health in crafting its sentence and explained that the 18 month prison term was warranted due to the egregiousness of Fetterhoff’s crime and the Court’s concern that she did not understand the seriousness of her offense. That was sufficient.

III. Conclusion

Based on the reasons provided by the Court, Fetterhoff’s sentence is substantively reasonable. Accordingly, we will affirm.